

# News from Ed Markey

**United States Congress**

**Massachusetts Seventh District**

**FOR IMMEDIATE RELEASE**

**May 13, 2004**

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## **Markey Introduces Legislation to Protect American Consumers From Offshoring of Their Personal Data**

***Markey Bill Requires Disclosure, Consumer Right to Block Transfers  
Offshore of Personal Financial, Medical, and Tax Information***

**WASHINGTON, D.C.** -- Representative Edward J. Markey, a senior Democratic Member of the House Energy and Commerce Committee, and the Co-Chair of the Congressional Privacy Caucus, today announced that he is introducing legislation to clarify the rights and responsibilities of companies, their regulators and consumers regarding the protection of privacy in global commerce.

Rep. Markey said, "It is becoming increasingly clear that both our jobs and our privacy are being shipped offshore, and federal regulators aren't doing nearly enough to stop it. In effect, regulators are telling consumers to 'check your privacy at the shore.' The bill I'm introducing today will help stop this dangerous trend from continuing."

The bill Rep. Markey introduced today, the "Personal Data Offshoring Protection Act of 2004" would prohibit companies from transferring personal information to any person outside the United States without notice and consent. Specifically, the Markey bill:

- Requires any business enterprise that transfers personally identifiable information regarding a U.S. citizen, such as the citizen's name, address, financial information, medical records, or other personal information to first provide prior notice to the citizen;
- Requires such businesses to allow consumers to block (or "opt out") of information transfers to any countries that the Federal Trade Commission ("FTC") has determined provide adequate and enforceable privacy protections, such as the European Union (EU);
- Requires such businesses to obtain the prior consent of the consumer (or "opt in") before personal data can be sent to other countries that the FTC determines do not provide adequate and enforceable privacy protections;
- Bars companies from refusing to provide goods or services to consumers who elect to exercise their "opt out" or "opt in" consent rights, or from charging consumers more if they chose to exercise such rights;

- Provides for enforcement of the bill's restrictions by the FTC by defining violations of the bill as a violation of the Federal Trade Commission Act's prohibition on unfair and deceptive acts or practices, thereby allowing the FTC to seek injunctions against violators and to impose financial penalties of up to \$11,000 per violation;
- Provides for additional civil remedies against violations, including authorization to the state attorney's general to bring civil actions to enjoin violations and impose monetary penalties of actual monetary losses or up to \$10,000 per violation, whichever is greater; and,
- Provides a citizen whose privacy rights are violated with a private right of action to sue a business who has violated the act for actual monetary damages or up to \$10,000 per violation, whichever is greater.

Rep. Markey noted that Senator Hillary Clinton (D-NY) recently introduced similar legislation in the Senate (S. 2312).

Earlier this week, Rep. Markey released a letter from FTC Chairman Timothy J. Muris responding to a request for information about FTC's regulatory actions to ensure that consumers' privacy is protected when personal data is sent offshore. Chairman Muris's response stated that under two key financial services laws, the Gramm-Leach-Bliley Act (GLBA) and the Fair Credit Reporting Act (FCRA), "financial institutions do not have to disclose to consumers that they are sharing nonpublic personal information with service providers" – including those located overseas. In contrast, in an April 6, 2004 response to Rep. Markey, IRS Commissioner Mark W. Everson, stated that "I believe and agree that the GLBA would require a [tax] return preparer to disclose to a client that a foreign person may help prepare a client's return; however the interpretation and enforcement of those rules (including the form of any required disclosure of returns and return information) lie with the Federal Trade Commission."

Rep. Markey noted that the bill he is introducing today will help clear up any confusion among federal regulators as to whether or not they have clear authority to take action to protect American consumers from privacy threats relating to the offshoring of call centers, data processing, tax return preparation or other services.

Markey explained, "Right now, consumers face a regulatory black hole when their families' most sensitive financial, medical, and tax return information is offshored to foreign countries. The U.S. company that offshores the data has the responsibility to protect the security and privacy of this data, but federal regulators have no idea whether they are actually doing so and little or no ability to influence the actions of their offshore affiliates or corporate partners. My bill will close these privacy loopholes."

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